IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

WP(C).No. 16152 of 2006(W)

E.A.243/05 IN E.P.15/04 IN O.S.9/01 OF SUB COURT, PALA.

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PETITIONER:

K.K. ANANDHAN, AGED 38 YEARS,
S/O. KESAVAN, RESIDING AT KUNNEL KEEZHAMPARA KARA,
KONDOOR VILLAGE, MEENACHIL TALUK, KOTTAYAM.

BY ADV. SRI.MANUEL KACHIRAMATTAM

RESPONDENTS:

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1. THE MANAGER,
SOUTH INDIAN BANK, BHARANANGANAM BRANCH,
KOTTAYAM.

2. K.K. ASWATHY,
THATTAVELIYATHU HOUSE, ERAMALLOOR P.O.,
CHERTHALA TALUK, ALAPPUZHA.

3. LAKSHMIKUTTY,
RESIDING AT KUNNEL, KEEZHAMPARA KARA,
KONDOOR VILLAGE, MEENACHIL TALUK, KOTTAYAM.

R1 BY ADV. SRI.K.PRABHAKARAN, SC,SOUTH INDIAN BANK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF EP.15/04 IN O.S.9/01 OF SUB COURT, PALA, FILED BY R1.

EXT.P2 – TRUE COPY OF CLAIM PETITION DT.17.11.05 FILED BY PETR. IN EP.15/04 NEFPRE SUB COURT, PALA.

EXT.P3 – TRUE COPY OF TAX RECEIPTS DT.4.6.98 ISSUED BY THIDANADU GRAMA PANCHAYAT.

EXT.P4 – TRUE COPY OF DO. DT.29.8.2000 ISSUED BY DO.

EXT.P5 – TRUE COPY OF DO. DT.18.3.05 ISSUED BY DO.

EXT.P6 – TRUE COPY OF OBJECTION DT.18.11.05 FILED BY R1 AGAOMST E.A.243/05

EXT.P7 – TRUE COPY OF ORDER DT.3.2.06 IN E.A.243/05 IN EP.15/04 IN O.S.9/01 OF SUB COURT, PALA.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.16152 OF 2006

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DATED THIS THE 7TH SEPTEMBER, 2007

J U D G M E N T

This Writ Petition is remaining defective on the reason that service is not completed on the 3rd respondent. Counsel for the petitioner submits that the 3rd respondent is no more and seeks time to take steps to bring the legal heirs of the 3rd respondent on record. But I find that the issue covered by Ext.P7 is essentially an issue between the petitioner and the decree-holder-bank and also the 2nd respondent-judgment-debtor. The Writ Petition therefore need not be treated as defective.

2. By Ext.P7, a claim petition filed by the petitioner, who is the son of the 3rd respondent, was dismissed by the learned Subordinate Judge. Though it would appear that Ext.P7 is an order by default, it is seen that it is a dismissal on merits also, in the sense that absence of evidence is also stated as a ground. Construing Ext.P7 order as one not by default, I relegate the petitioner to the remedy by way of appeal against Ext.P7 and dismiss the Writ Petition. However, the order of stay presently passed will continue for one more month.

(PIUS C.KURIAKOSE, JUDGE)

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